

AMENDED IN ASSEMBLY MAY 1, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 339**

**Introduced by Assembly Member Aghazarian**

February 11, 2003

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An act to amend Sections 50199.50, 50199.52, and 50199.54 of the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of, and to repeal Sections 17053.14, 23608.2, and 23608.3 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 339, as amended, Aghazarian. Farmworker housing tax credits.

Existing insurance tax law, the Personal Income Tax Law, and the ~~Bank and~~ Corporation Tax Law allow, in modified conformity to federal income tax laws, taxpayers a credit against the taxes imposed by those laws for providing low-income housing, and require the California Tax Credit Allocation Committee to allocate the credit in accordance with specified criteria.

The Personal Income Tax Law and the ~~Bank and~~ Corporation Tax Law also allow a credit against the taxes imposed by those laws in an amount equal to 50% of the eligible costs of constructing or rehabilitating farmworker housing. The credit is allocated pursuant to the Farmworker Housing Assistance Program by the California Tax

Credit Allocation Committee in ~~an amount not to exceed \$70,000,000~~ specified amounts per calendar year.

This bill would revise and recast the credit for farmworker housing under the provisions providing for the credit for low-income housing, thereby, among other things, allowing a credit for the entire amount of eligible costs for constructing or rehabilitating farmworker housing, *as provided*. ~~However, the \$70,000,000 aggregate limitation would continue to apply.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 50199.50 of the Health and Safety Code  
2 is amended to read:  
3 50199.50. For the purposes of this chapter:  
4 (a) “Agricultural worker” or “farmworker” shall have the  
5 same meaning as specified in subdivision (b) of Section 1140.4 of  
6 the Labor Code.  
7 (b) “Compliance period” means, with respect to any  
8 farmworker housing, the period of 30 consecutive taxable ~~or~~  
9 ~~income~~ years, beginning with the taxable or income year in which  
10 the credit is allowable.  
11 (c) “Eligible costs” means the total finance costs, construction  
12 costs, excavation costs, installation costs, and permit costs paid or  
13 incurred to construct or rehabilitate farmworker housing.  
14 “Eligible costs” include, but are not limited to, improvements to  
15 ensure compliance with laws governing access for persons with  
16 disabilities and costs related to reducing utility expenses.  
17 Noneligible costs include land and those costs financed by grants  
18 and below-market financing.  
19 (d) “Farmworker housing” means housing for agricultural  
20 workers and may include, but need not be limited to,  
21 conventionally constructed units and manufactured housing.  
22 (e) “Farmworker housing tax credits” means the tax credits  
23 authorized by Sections 12206, 17058, and 23610.5 of the Revenue  
24 and Taxation Code.  
25 (f) “Household” has the same meaning as defined in Section  
26 7602 of Title 25 of the California Code of Regulations.

(g) “Committee” means the California Tax Credit Allocation Committee as defined in Section 50199.7.

SEC. 2. Section 50199.52 of the Health and Safety Code is amended to read:

50199.52. All housing assisted pursuant to this chapter shall comply with the following requirements:

(a) (1) The recipient of a tax credit pursuant to Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, or the owner of the farmworker housing assisted pursuant to Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, shall enter into those agreements required by the committee to further the purposes of this chapter and the applicable farmworker housing tax credit sections.

(2) The owner shall agree that the farmworker housing units assisted with the farmworker housing tax credits shall be utilized, maintained, and operated pursuant to this chapter for the compliance term specified by the applicable farmworker housing tax credit statute.

(b) (1) The farmworker housing assisted pursuant to this chapter shall be available to, and occupied by, only farmworkers and their households. However, in the event of a natural disaster or other critical occurrence, as determined by the committee, the housing may be utilized at the discretion of the owner for households needing shelter for up to 60 days if there are no farmworkers who have submitted an application to reside, or to continue to reside, in the housing. The occupants of the housing need not be limited to farmworkers employed by the property owner.

(2) In addition, where the housing is designed and operated as a dormitory, the owner and operator may restrict occupancy by sex. However, in awarding credits pursuant to this chapter, the committee shall give preference to proposed farmworker housing that is designed and operated for families rather than for single sex dormitories.

(c) The expenditures upon which the amount of the farmworker housing tax credit is based shall be eligible costs.

SEC. 3. Section 50199.54 of the Health and Safety Code is amended to read:

50199.54. (a) In the event that the owner who receives a credit pursuant to Section 12206, 17058, or 23610.5 of the

1 Revenue and Taxation Code demonstrates, to the committee's  
2 satisfaction, that there is no further need for farmworker housing  
3 or that it is no longer economically feasible to operate the  
4 farmworker housing, the owner shall pay to the Franchise Tax  
5 Board a pro rata portion of the credit previously allowed equal to  
6 the amount of any tax credit previously allowed, multiplied by the  
7 ratio of the number of years not elapsed in the compliance period  
8 divided by 30.

9 (b) In the event that the farmworker housing is damaged or  
10 destroyed by a casualty not caused by the owner, the compliance  
11 period has not expired, and the owner commences reasonable  
12 action to repair or replace the farmworker housing, the taxpayer  
13 may continue to claim the credit as if no destruction had taken  
14 place.

15 SEC. 4. Section 12206 of the Revenue and Taxation Code is  
16 amended to read:

17 12206. (a) (1) There shall be allowed as a credit against the  
18 "tax" (as defined by Section 12201) a state low-income housing  
19 tax credit in an amount equal to the amount determined in  
20 subdivision (c), computed in accordance with Section 42 of the  
21 Internal Revenue Code, except as otherwise provided in this  
22 section.

23 (2) "Taxpayer," for purposes of this section, means the sole  
24 owner in the case of a C corporation, the partners in the case of a  
25 partnership, and the shareholders in the case of an S corporation.

26 (3) "Housing sponsor," for purposes of this section, means the  
27 sole owner in the case of a C corporation, the partnership in the  
28 case of a partnership, and the S corporation in the case of an S  
29 corporation.

30 (b) (1) The amount of the credit allocated to any housing  
31 sponsor shall be authorized by the California Tax Credit  
32 Allocation Committee, or any successor thereof, based on a  
33 project's need for the credit for economic feasibility in accordance  
34 with the requirements of this section.

35 (A) The low-income housing project shall be located in  
36 California and shall meet either of the following requirements:

37 (i) The project's housing sponsor shall have been allocated by  
38 the California Tax Credit Allocation Committee a credit for  
39 federal income tax purposes under Section 42 of the Internal  
40 Revenue Code.



1 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the  
2 Internal Revenue Code.

3 (B) The California Tax Credit Allocation Committee may not  
4 require fees for the credit under this section in addition to those  
5 fees required for applications for the tax credit pursuant to Section  
6 42 of the Internal Revenue Code. The committee may require a fee  
7 if the application for the credit under this section is submitted in  
8 a calendar year after the year the application is submitted for the  
9 federal tax credit.

10 (2) (A) The California Tax Credit Allocation Committee shall  
11 certify to the housing sponsor the amount of tax credit under this  
12 section allocated to the housing sponsor for each credit period.

13 (B) In the case of a partnership or an S corporation, the housing  
14 sponsor shall provide a copy of the California Tax Credit  
15 Allocation Committee certification to the taxpayer.

16 (C) The taxpayer shall attach a copy of the certification to any  
17 return upon which a tax credit is claimed under this section.

18 (D) In the case of a failure to attach a copy of the certification  
19 for the year to the return in which a tax credit is claimed under this  
20 section, no credit under this section shall be allowed for that year  
21 until a copy of that certification is provided.

22 (E) All elections made by the taxpayer pursuant to Section 42  
23 of the Internal Revenue Code shall apply to this section.

24 (F) No credit shall be allocated under this section to buildings  
25 located in a difficult development area or a qualified census tract  
26 as defined in Section 42 of the Internal Revenue Code for which  
27 the eligible basis of a new building or the rehabilitation  
28 expenditure of an existing building is 130 percent of that amount  
29 pursuant to Section 42(d)(5)(C) of the Internal Revenue Code,  
30 unless the committee reduces the amount of federal credit, with the  
31 approval of the applicant, so that the combined amount of federal  
32 and state credit does not exceed the total credit allowable pursuant  
33 to this section and Section 42(b) of the Internal Revenue Code,  
34 computed without regard to Section 42(d)(5)(C) of the Internal  
35 Revenue Code.

36 (c) Section 42(b) of the Internal Revenue Code shall be  
37 modified as follows:

38 (1) In the case of any qualified low-income building that  
39 receives an allocation after 1989 and is a new building not

1 federally subsidized, the term “applicable percentage” means the  
2 following:

3 (A) For each of the first three years, the percentage prescribed  
4 by the Secretary of the Treasury for new buildings that are not  
5 federally subsidized for the taxable year, determined in  
6 accordance with the requirements of Section 42(b)(2) of the  
7 Internal Revenue Code, in lieu of the percentage prescribed in  
8 Section 42(b)(1)(A) of the Internal Revenue Code.

9 (B) For the fourth year, the difference between 30 percent and  
10 the sum of the applicable percentages for the first three years.

11 (2) In the case of any qualified low-income building that  
12 receives an allocation after 1989 and that is a new building that is  
13 federally subsidized or that is an existing building that is “at risk  
14 of conversion,” the term “applicable percentage” means the  
15 following:

16 (A) For each of the first three years, the percentage prescribed  
17 by the Secretary of the Treasury for new buildings that are  
18 federally subsidized for the taxable year.

19 (B) For the fourth year, the difference between 13 percent and  
20 the sum of the applicable percentages for the first three years.

21 (3) For purposes of this section, the term “at risk of  
22 conversion,” with respect to an existing building means a building  
23 that satisfies all of the following criteria:

24 (A) The building is presently owned by a housing sponsor other  
25 than a qualified nonprofit organization.

26 (B) The building is a federally assisted building for which the  
27 low-income use restrictions will terminate or the mortgage on the  
28 building is eligible for incentives under Subtitle 13 of the  
29 Emergency Low Income Housing Assistance Act of 1987 or under  
30 Section 502(c) of the Housing Act of 1949, anytime in the two  
31 calendar years after the year of application to the California Tax  
32 Credit Allocation Committee, and the purchaser has received  
33 preliminary approval from the applicable federal agency for a  
34 maximum level of incentives through a plan of action.

35 (C) The person acquiring the building enters into a regulatory  
36 agreement that requires the building to be operated in accordance  
37 with the requirements of this section for a period equal to the  
38 greater of 55 years or the life of the building.

39 (D) The building satisfies the requirements of Section 42(e) of  
40 the Internal Revenue Code regarding rehabilitation expenditures,

1 except that the provisions of Section 42(e)(3)(A)(ii)(I) does not  
2 apply.

3 (d) The term “qualified low-income housing project” as  
4 defined in Section 42(c)(2) of the Internal Revenue Code is  
5 modified by adding the following requirements:

6 (1) The taxpayer shall be entitled to receive a cash distribution  
7 from the operations of the project, after funding required reserves,  
8 which, at the election of the taxpayer, is equal to:

9 (A) An amount not to exceed 8 percent of the lesser of:

10 (i) The owner equity which shall include the amount of the  
11 capital contributions actually paid to the housing sponsor and may  
12 not include any amounts until they are paid on an investor note.

13 (ii) Twenty percent of the adjusted basis of the building as of  
14 the close of the first taxable year of the credit period.

15 (B) The amount of the cash-flow from those units in the  
16 building that are not low-income units. For purposes of computing  
17 cash-flow under this subparagraph, operating costs shall be  
18 allocated to the low-income units using the “floor space fraction,”  
19 as defined in Section 42 of the Internal Revenue Code.

20 (C) Any amount allowed to be distributed under subparagraph  
21 (A) that is not available for distribution during the first five years  
22 of the compliance period may accumulate and be distributed any  
23 time during the first 15 years of the compliance period but not  
24 thereafter.

25 (2) The limitation on return shall apply in the aggregate to the  
26 partners if the housing sponsor is a partnership and in the aggregate  
27 to the shareholders if the housing sponsor is an S corporation.

28 (3) The housing sponsor shall apply any cash available for  
29 distribution in excess of the amount eligible to be distributed under  
30 paragraph (1) to reduce the rent on rent-restricted units or to  
31 increase the number of rent-restricted units subject to the tests of  
32 Section 42(g)(1) of the Internal Revenue Code.

33 (e) The provisions of Section 42(f) of the Internal Revenue  
34 Code shall be modified as follows:

35 (1) The term “credit period” as defined in Section 42(f)(1) of  
36 the Internal Revenue Code is modified by substituting “four  
37 taxable years” for “10 taxable years.”

38 (2) The special rule for the first taxable year of the credit period  
39 under Section 42(f)(2) of the Internal Revenue Code does not  
40 apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code is not applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code are not applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following: ~~but not to exceed seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year (for the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for all urban consumers published by the federal Department of Labor)~~

~~(1) To be allocated for qualified low-income housing projects, including farmworker housing:~~

~~(A) Forty-five million dollars (\$45,000,000).~~

1 ~~(B) The unused housing credit ceiling, if any, for the preceding~~  
2 ~~calendar years.~~

3 ~~(C) The amount of housing credit ceiling returned in the~~  
4 ~~calendar year. For purposes of this subparagraph, the amount of~~  
5 ~~housing credit dollar amount returned in the calendar year equals~~  
6 ~~the housing credit dollar amount previously allocated to any~~  
7 ~~project that does not become a qualified low-income housing~~  
8 ~~project within the period required by this section or to any project~~  
9 ~~with respect to which an allocation is canceled by mutual consent~~  
10 ~~of the California Tax Credit Allocation Committee and the~~  
11 ~~allocation recipient.~~

12 ~~(2) following:~~

13 *(1) Seventy million dollars (\$70,000,000) for the 2001*  
14 *calendar year; and, for the 2002 calendar year and each calendar*  
15 *year thereafter, seventy million dollars (\$70,000,000) increased by*  
16 *the percentage, if any, by which the Consumer Price Index for the*  
17 *preceding calendar year exceeds the Consumer Price Index for the*  
18 *2001 calendar year. For the purposes of this paragraph, the term*  
19 *“Consumer Price Index” means the last Consumer Price Index for*  
20 *all urban consumers published by the federal Department of*  
21 *Labor.*

22 *(2) The unused housing credit ceiling, if any, for the preceding*  
23 *calendar years.*

24 *(3) The amount of housing credit ceiling returned in the*  
25 *calendar year. For purposes of this paragraph, the amount of*  
26 *housing credit dollar amount returned in the calendar year equals*  
27 *the housing credit dollar amount previously allocated to any*  
28 *project that does not become a qualified low-income housing*  
29 *project with the period required by this section, or to any project*  
30 *with respect to which an allocation is canceled by mutual consent*  
31 *of the California Tax Credit Allocation Committee and the*  
32 *allocation recipient.*

33 *(4) To be specifically designated for the construction or*  
34 *rehabilitation of qualified farmworker housing, all of the*  
35 *following:*

36 *(A) Five hundred thousand dollars (\$500,000), increased*  
37 *annually by the California Consumer Price Index.*

38 *(B) The unused qualified farmworker housing credits, if any,*  
39 *for the preceding calendar year or years.*

(C) The amount of qualified farmworker housing credit ceiling returned in the calendar year. For purposes of this subparagraph, the amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income farmworker housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

“Qualified farmworker housing” means housing located within this state that satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

The farmworker housing tax credit may not be allowed unless the taxpayer constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of eligible costs from a qualified accountant; and, subsequent to the construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(h) The term “compliance period” as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code is not applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The



1 regulatory agreement entered into pursuant to subdivision (f) of  
2 Section 50199.14 of the Health and Safety Code, shall apply,  
3 providing the agreement includes all of the following provisions:

4 (A) A term not less than the compliance period.

5 (B) A requirement that the agreement be filed in the official  
6 records of the county in which the qualified low-income housing  
7 project is located.

8 (C) A provision stating which state and local agencies can  
9 enforce the regulatory agreement in the event the housing sponsor  
10 fails to satisfy any of the requirements of this section.

11 (D) A provision that the regulatory agreement shall be deemed  
12 a contract enforceable by tenants as third-party beneficiaries  
13 thereto and that allows individuals, whether prospective, present,  
14 or former occupants of the building, who meet the income  
15 limitation applicable to the building, the right to enforce the  
16 regulatory agreement in any state court.

17 (E) A provision incorporating the requirements of Section 42  
18 of the Internal Revenue Code as modified by this section.

19 (F) A requirement that the housing sponsor notify the  
20 California Tax Credit Allocation Committee or its designee and  
21 the local agency that can enforce the regulatory agreement if there  
22 is a determination by the Internal Revenue Service that the project  
23 is not in compliance with Section 42(g) of the Internal Revenue  
24 Code.

25 (G) A requirement that the housing sponsor, as security for the  
26 performance of the housing sponsor's obligations under the  
27 regulatory agreement, assign the housing sponsor's interest in  
28 rents that it receives from the project, provided that until there is  
29 a default under the regulatory agreement, the housing sponsor is  
30 entitled to collect and retain the rents.

31 (H) The remedies available in the event of a default under the  
32 regulatory agreement that is not cured within a reasonable cure  
33 period, include, but are not limited to, allowing any of the parties  
34 designated to enforce the regulatory agreement to collect all rents  
35 with respect to the project; taking possession of the project and  
36 operating the project in accordance with the regulatory agreement  
37 until the enforcer determines the housing sponsor is in a position  
38 to operate the project in accordance with the regulatory agreement;  
39 applying to any court for specific performance; securing the

1 appointment of a receiver to operate the project; or any other relief  
2 as may be appropriate.

3 (j) (1) The committee shall allocate the housing credit on a  
4 regular basis consisting of two or more periods in each calendar  
5 year during which applications may be filed and considered. The  
6 committee shall establish application filing deadlines, the  
7 maximum percentage of federal and state low-income housing tax  
8 credit ceiling that may be allocated by the committee in that  
9 period, and the approximate date on which allocations shall be  
10 made. If the enactment of federal or state law, the adoption of rules  
11 or regulations, or other similar events prevent the use of two  
12 allocation periods, the committee may reduce the number of  
13 periods and adjust the filing deadlines, maximum percentage of  
14 credit allocated, and the allocation dates.

15 (2) The committee shall adopt a qualified allocation plan, as  
16 provided in Section 42(m)(1) of the Internal Revenue Code. In  
17 adopting this plan, the committee shall comply with the provisions  
18 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue  
19 Code.

20 (3) Notwithstanding Section 42(m) of the Internal Revenue  
21 Code, the California Tax Credit Allocation Committee shall  
22 allocate housing credits in accordance with the qualified allocation  
23 plan and regulations, which shall include the following provisions:

24 (A) All housing sponsors, as defined by paragraph (3) of  
25 subdivision (a), shall demonstrate at the time the application is  
26 filed with the committee that the project meets the following  
27 threshold requirements:

28 (i) The housing sponsor shall demonstrate there is a need and  
29 demand for low-income housing in the community or region for  
30 which it is proposed.

31 (ii) The project's proposed financing, including tax credit  
32 proceeds, shall be sufficient to complete the project and that the  
33 proposed operating income shall be adequate to operate the project  
34 for the extended use period.

35 (iii) The project shall have enforceable financing  
36 commitments, either construction or permanent financing, for at  
37 least 50 percent of the total estimated financing of the project.

38 (iv) The housing sponsor shall have and maintain control of the  
39 site for the project.

1 (v) The housing sponsor shall demonstrate that the project  
2 complies with all applicable local land use and zoning ordinances.

3 (vi) The housing sponsor shall demonstrate that the project  
4 development team has the experience and the financial capacity to  
5 ensure project completion and operation for the extended use  
6 period.

7 (vii) The housing sponsor shall demonstrate the amount of tax  
8 credit that is necessary for the financial feasibility of the project  
9 and its viability as a qualified low-income housing project  
10 throughout the extended use period, taking into account operating  
11 expenses, a supportable debt service, reserves, funds set aside for  
12 rental subsidies, and required equity, and a development fee that  
13 does not exceed a specified percentage of the eligible basis of the  
14 project prior to inclusion of the development fee in the eligible  
15 basis, as determined by the committee.

16 (B) The committee shall give a preference to those projects  
17 satisfying all of the threshold requirements of subparagraph (A) if  
18 both of the following apply:

19 (i) The project serves the lowest income tenants at rents  
20 affordable to those tenants.

21 (ii) The project is obligated to serve qualified tenants for the  
22 longest period.

23 (C) In addition to the provisions of subparagraphs (A) and (B),  
24 the committee shall use the following criteria in allocating housing  
25 credits:

26 (i) Projects serving large families in which a substantial  
27 number, as defined by the committee, of all residential units is  
28 comprised of low-income units with three and more bedrooms.

29 (ii) Projects providing single room occupancy units serving  
30 very low income tenants.

31 (iii) Existing projects that are “at risk of conversion,” as  
32 defined by paragraph (4) of subdivision (c).

33 (iv) Projects for which a public agency provides direct or  
34 indirect long-term financial support for at least 15 percent of the  
35 total project development costs or projects for which the owner’s  
36 equity constitutes at least 30 percent of the total project  
37 development costs.

38 (v) Projects that provide tenant amenities not generally  
39 available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee may not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the state credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

SEC. 5. Section 17053.14 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 17058 of the Revenue and Taxation Code is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) “Taxpayer” for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) “Housing sponsor” for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit

Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee may not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and

1 3 percent for the fourth year for new buildings (whether or not the  
2 building is federally subsidized) and for existing buildings.

3 (2) In the case of any qualified low-income building that  
4 receives an allocation after 1989 and is a new building not  
5 federally subsidized, the term “applicable percentage” means the  
6 following:

7 (A) For each of the first three years, the percentage prescribed  
8 by the Secretary of the Treasury for new buildings that are not  
9 federally subsidized for the taxable year, determined in  
10 accordance with the requirements of Section 42(b)(2) of the  
11 Internal Revenue Code, in lieu of the percentage prescribed in  
12 Section 42(b)(1)(A) of the Internal Revenue Code.

13 (B) For the fourth year, the difference between 30 percent and  
14 the sum of the applicable percentages for the first three years.

15 (3) In the case of any qualified low-income building that  
16 receives an allocation after 1989 and that is a new building that is  
17 federally subsidized or that is an existing building that is “at risk  
18 of conversion,” the term “applicable percentage” means the  
19 following:

20 (A) For each of the first three years, the percentage prescribed  
21 by the Secretary of the Treasury for new buildings that are  
22 federally subsidized for the taxable year.

23 (B) For the fourth year, the difference between 13 percent and  
24 the sum of the applicable percentages for the first three years.

25 (4) For purposes of this section, the term “at risk of  
26 conversion,” with respect to an existing building means a building  
27 that satisfies all of the following criteria:

28 (A) The building is presently owned by a housing sponsor other  
29 than a qualified nonprofit organization.

30 (B) The building is a federally assisted building for which the  
31 low-income use restrictions will terminate or the building is  
32 eligible for incentives under Subtitle 13 of the Emergency Low  
33 Income Housing Preservation Act of 1987 or under Section 502(c)  
34 of the Housing Act of 1949, anytime in the two calendar years after  
35 the year of application to the California Tax Credit Allocation  
36 Committee, and the purchaser has received preliminary approval  
37 from the applicable federal agency for a maximum level of  
38 incentives through a plan of action.

39 (C) The person acquiring the building enters into a regulatory  
40 agreement that requires the building to be operated in accordance

1 with the requirements of this section for a period equal to the  
2 greater of 55 years or the life of the building.

3 (D) The building satisfies the requirements of Section 42(e) of  
4 the Internal Revenue Code regarding rehabilitation expenditures,  
5 except that the provisions of Section 42(e)(3)(A)(ii)(I) do not  
6 apply.

7 (d) The term “qualified low-income housing project” as  
8 defined in Section 42(c)(2) of the Internal Revenue Code is  
9 modified by adding the following requirements:

10 (1) The taxpayer shall be entitled to receive a cash distribution  
11 from the operations of the project, after funding required reserves,  
12 that, at the election of the taxpayer, is equal to:

13 (A) An amount not to exceed 8 percent of the lesser of:

14 (i) The owner equity that shall include the amount of the capital  
15 contributions actually paid to the housing sponsor and may not  
16 include any amounts until they are paid on an investor note.

17 (ii) Twenty percent of the adjusted basis of the building as of  
18 the close of the first taxable year of the credit period.

19 (B) The amount of the cash-flow from those units in the  
20 building that are not low-income units. For purposes of computing  
21 cash-flow under this subparagraph, operating costs shall be  
22 allocated to the low-income units using the “floor space fraction,”  
23 as defined in Section 42 of the Internal Revenue Code.

24 (C) Any amount allowed to be distributed under subparagraph  
25 (A) that is not available for distribution during the first five years  
26 of the compliance period may be accumulated and distributed any  
27 time during the first 15 years of the compliance period but not  
28 thereafter.

29 (2) The limitation on return shall apply in the aggregate to the  
30 partners if the housing sponsor is a partnership and in the aggregate  
31 to the shareholders if the housing sponsor is an S corporation.

32 (3) The housing sponsor shall apply any cash available for  
33 distribution in excess of the amount eligible to be distributed under  
34 paragraph (1) to reduce the rent on rent-restricted units or to  
35 increase the number of rent-restricted units subject to the tests of  
36 Section 42(g)(1) of the Internal Revenue Code.

37 (e) The provisions of Section 42(f) of the Internal Revenue  
38 Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four taxable years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code does not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code is applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code are not applicable to this section.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 23610.5 shall be an amount equal to the sum of all the following: ~~but not to exceed seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year (for the purposes of this paragraph, the term “Consumer Price Index” means the last~~

1 Consumer Price Index for all urban consumers published by the  
2 federal Department of Labor):

3 (1) ~~To be allocated for qualified low-income housing projects,~~  
4 ~~including farmworker housing:~~

5 (A) ~~Forty-five million dollars (\$45,000,000).~~

6 (B) ~~The unused housing credit ceiling, if any, for the preceding~~  
7 ~~calendar years.~~

8 (C) ~~The amount of housing credit ceiling returned in the~~  
9 ~~calendar year. For purposes of this subparagraph, the amount of~~  
10 ~~housing credit dollar amount returned in the calendar year equals~~  
11 ~~the housing credit dollar amount previously allocated to any~~  
12 ~~project that does not become a qualified low-income housing~~  
13 ~~project within the period required by this section or to any project~~  
14 ~~with respect to which an allocation is canceled by mutual consent~~  
15 ~~of the California Tax Credit Allocation Committee and the~~  
16 ~~allocation recipient.~~

17 (2) ~~following:~~

18 (1) *Seventy million dollars (\$70,000,000) for the 2001*  
19 *calendar year, and, for the 2002 calendar year and each calendar*  
20 *year thereafter, seventy million dollars (\$70,000,000) increased by*  
21 *the percentage, if any, by which the Consumer Price Index for the*  
22 *preceding calendar year exceeds the Consumer Price Index for the*  
23 *2001 calendar year. For the purposes of this paragraph, the term*  
24 *“Consumer Price Index” means the last Consumer Price Index for*  
25 *all urban consumers published by the federal Department of*  
26 *Labor.*

27 (2) *The unused housing credit ceiling, if any, for the preceding*  
28 *calendar years.*

29 (3) *The amount of housing credit ceiling returned in the*  
30 *calendar year. For purposes of this paragraph, the amount of*  
31 *housing credit dollar amount returned in the calendar year equals*  
32 *the housing credit dollar amount previously allocated to any*  
33 *project that does not become a qualified low-income housing*  
34 *project with the period required by this section, or to any project*  
35 *with respect to which an allocation is canceled by mutual consent*  
36 *of the California Tax Credit Allocation Committee and the*  
37 *allocation recipient.*

38 (4) *To be specifically designated for the construction or*  
39 *rehabilitation of qualified farmworker housing, all of the*  
40 *following:*

1 (A) Five hundred thousand dollars (\$500,000), *increased*  
2 *annually by the California Consumer Price Index.*

3 (B) The unused qualified farmworker housing credits, if any,  
4 for the preceding calendar year or years.

5 (C) The amount of qualified farmworker housing credit ceiling  
6 returned in the calendar year. For purposes of this subparagraph,  
7 the amount returned in the calendar year equals the housing credit  
8 dollar amount previously allocated to any project that does not  
9 become a qualified low-income farmworker housing project  
10 within the period required by this section or to any project with  
11 respect to which an allocation is canceled by mutual consent of the  
12 California Tax Credit Allocation Committee and the allocation  
13 recipient.

14 “Qualified farmworker housing” means housing located within  
15 this state that satisfies the requirements of the Farmworker  
16 Housing Assistance Program. The housing may be vacant or  
17 occupied, and it need not be licensed pursuant to the Employee  
18 Housing Act at the time of the initiation of construction or  
19 rehabilitation.

20 The farmworker housing tax credit may not be allowed unless  
21 the taxpayer constructs or rehabilitates the property subject to the  
22 covenants, conditions, and restrictions imposed by this section and  
23 pursuant to the Farmworker Housing Assistance Program, which  
24 shall include, but not necessarily be limited to, a requirement that  
25 the taxpayer obtain, for approval by the committee, a construction  
26 cost audit and certification of eligible costs from a qualified  
27 accountant; and, subsequent to the construction or rehabilitation  
28 of the farmworker housing, owns or operates the farmworker  
29 housing pursuant to the requirements of this section, or ensures the  
30 ownership and operation of the farmworker housing pursuant to  
31 the requirements of this section.

32 (h) The term “compliance period” as defined in Section  
33 42(i)(1) of the Internal Revenue Code is modified to mean, with  
34 respect to any building, the period of 30 consecutive taxable years  
35 beginning with the first taxable year of the credit period with  
36 respect thereto.

37 (i) Section 42(j) of the Internal Revenue Code is not applicable  
38 and the following requirements of this section shall be set forth in  
39 a regulatory agreement between the California Tax Credit  
40 Allocation Committee and the housing sponsor, which agreement

1 shall be subordinated, when required, to any lien or encumbrance  
2 of any banks or other institutional lenders to the project. The  
3 regulatory agreement entered into pursuant to subdivision (f) of  
4 Section 50199.14 of the Health and Safety Code shall apply,  
5 providing the agreement includes all of the following provisions:

6 (1) A term not less than the compliance period.

7 (2) A requirement that the agreement be filed in the official  
8 records of the county in which the qualified low-income housing  
9 project is located.

10 (3) A provision stating which state and local agencies can  
11 enforce the regulatory agreement in the event the housing sponsor  
12 fails to satisfy any of the requirements of this section.

13 (4) A provision that the regulatory agreement shall be deemed  
14 a contract enforceable by tenants as third-party beneficiaries  
15 thereto and that allows individuals, whether prospective, present,  
16 or former occupants of the building, who meet the income  
17 limitation applicable to the building, the right to enforce the  
18 regulatory agreement in any state court.

19 (5) A provision incorporating the requirements of Section 42  
20 of the Internal Revenue Code as modified by this section.

21 (6) A requirement that the housing sponsor notify the  
22 California Tax Credit Allocation Committee or its designee if there  
23 is a determination by the Internal Revenue Service that the project  
24 is not in compliance with Section 42(g) of the Internal Revenue  
25 Code.

26 (7) A requirement that the housing sponsor, as security for the  
27 performance of the housing sponsor's obligations under the  
28 regulatory agreement, assign the housing sponsor's interest in  
29 rents that it receives from the project, provided that until there is  
30 a default under the regulatory agreement, the housing sponsor is  
31 entitled to collect and retain the rents.

32 (8) The remedies available in the event of a default under the  
33 regulatory agreement that is not cured within a reasonable cure  
34 period, include, but are not limited to, allowing any of the parties  
35 designated to enforce the regulatory agreement to collect all rents  
36 with respect to the project; taking possession of the project and  
37 operating the project in accordance with the regulatory agreement  
38 until the enforcer determines the housing sponsor is in a position  
39 to operate the project in accordance with the regulatory agreement;  
40 applying to any court for specific performance; securing the

1 appointment of a receiver to operate the project; or any other relief  
2 as may be appropriate.

3 (j) (1) The committee shall allocate the housing credit on a  
4 regular basis consisting of two or more periods in each calendar  
5 year during which applications may be filed and considered. The  
6 committee shall establish application filing deadlines, the  
7 maximum percentage of federal and state low-income housing tax  
8 credit ceiling that may be allocated by the committee in that  
9 period, and the approximate date on which allocations shall be  
10 made. If the enactment of federal or state law, the adoption of rules  
11 or regulations or other similar events prevent the use of two  
12 allocation periods, the committee may reduce the number of  
13 periods and adjust the filing deadlines, maximum percentage of  
14 credit allocated, and the allocation dates.

15 (2) The committee shall adopt a qualified allocation plan, as  
16 provided in Section 42(m)(1) of the Internal Revenue Code. In  
17 adopting this plan, the committee shall comply with the provisions  
18 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue  
19 Code.

20 (3) Notwithstanding Section 42(m) of the Internal Revenue  
21 Code, the California Tax Credit Allocation Committee shall  
22 allocate housing credits in accordance with the qualified allocation  
23 plan and regulations, which shall include the following provisions:

24 (A) All housing sponsors, as defined by paragraph (3) of  
25 subdivision (a), shall demonstrate at the time the application is  
26 filed with the committee that the project meets the following  
27 threshold requirements:

28 (i) The housing sponsor shall demonstrate there is a need and  
29 demand for low-income housing in the community or region for  
30 which it is proposed.

31 (ii) The project's proposed financing, including tax credit  
32 proceeds, shall be sufficient to complete the project and that the  
33 proposed operating income shall be adequate to operate the project  
34 for the extended use period.

35 (iii) The project shall have enforceable financing  
36 commitments, either construction or permanent financing, for at  
37 least 50 percent of the total estimated financing of the project.

38 (iv) The housing sponsor shall have and maintain control of the  
39 site for the project.

1 (v) The housing sponsor shall demonstrate that the project  
2 complies with all applicable local land use and zoning ordinances.

3 (vi) The housing sponsor shall demonstrate that the project  
4 development team has the experience and the financial capacity to  
5 ensure project completion and operation for the extended use  
6 period.

7 (vii) The housing sponsor shall demonstrate the amount of tax  
8 credit that is necessary for the financial feasibility of the project  
9 and its viability as a qualified low-income housing project  
10 throughout the extended use period, taking into account operating  
11 expenses, a supportable debt service, reserves, funds set aside for  
12 rental subsidies, and required equity, and a development fee that  
13 does not exceed a specified percentage of the eligible basis of the  
14 project prior to inclusion of the development fee in the eligible  
15 basis, as determined by the committee.

16 (B) The committee shall give a preference to those projects  
17 satisfying all of the threshold requirements of subparagraph (A) if  
18 both of the following apply:

19 (i) The project serves the lowest income tenants at rents  
20 affordable to those tenants.

21 (ii) The project is obligated to serve qualified tenants for the  
22 longest period.

23 (C) In addition to the provisions of subparagraphs (A) and (B),  
24 the committee shall use the following criteria in allocating housing  
25 credits:

26 (i) Projects serving large families in which a substantial  
27 number, as defined by the committee of all residential units is  
28 comprised of low-income units with three and more bedrooms.

29 (ii) Projects providing single room occupancy units serving  
30 very low income tenants.

31 (iii) Existing projects that are “at risk of conversion,” as  
32 defined by paragraph (4) of subdivision (c).

33 (iv) Projects for which a public agency provides direct or  
34 indirect long-term financial support for at least 15 percent of the  
35 total project development costs or projects for which the owner’s  
36 equity constitutes at least 30 percent of the total project  
37 development costs.

38 (v) Projects that provide tenant amenities not generally  
39 available to residents of low-income housing projects.

1 (4) For purposes of allocating credits pursuant to this section,  
2 the committee may not give preference to any project by virtue of  
3 the date of submission of its application.

4 (k) Section 42(l) of the Internal Revenue Code shall be  
5 modified as follows:

6 The term “secretary” shall be replaced by the term “California  
7 Franchise Tax Board.”

8 (l) In the case where the credit allowed under this section  
9 exceeds the net tax, the excess credit may be carried over to reduce  
10 the net tax in the following year, and succeeding taxable years, if  
11 necessary, until the credit has been exhausted.

12 (m) A project that received an allocation of a 1989 federal  
13 housing credit dollar amount shall be eligible to receive an  
14 allocation of a 1990 state housing credit dollar amount, subject to  
15 all of the following conditions:

16 (1) The project was not placed in service prior to 1990.

17 (2) To the extent the amendments made to this section by the  
18 Statutes of 1990 conflict with any provisions existing in this  
19 section prior to those amendments, the prior provisions of law  
20 shall prevail.

21 (3) Notwithstanding paragraph (2), a project applying for an  
22 allocation under this subdivision shall be subject to the  
23 requirements of paragraph (3) of subdivision (j).

24 (n) The credit period with respect to an allocation of credit in  
25 1989 by the California Tax Credit Allocation Committee of which  
26 any amount is attributable to unallocated credit from 1987 or 1988  
27 does not begin until after December 31, 1989.

28 (o) The provisions of Section 11407(a) of Public Law 101-508,  
29 relating to the effective date of the extension of the low-income  
30 housing credit, shall apply to calendar years after 1989.

31 (p) The provisions of Section 11407(c) of Public Law 101-508,  
32 relating to election to accelerate credit, shall not apply.

33 (q) Any unused credit may continue to be carried forward, as  
34 provided in subdivision (l), until the credit has been exhausted.

35 This section shall remain in effect on and after December 1,  
36 1990, for as long as Section 42 of the Internal Revenue Code  
37 pertaining to low-income housing credits remains in effect.

38 (r) The amendments to this section by the act adding this  
39 subdivision shall apply only to taxable years beginning on or after  
40 January 1, 1994.

1 SEC. 7. Section 23608.2 of the Revenue and Taxation Code  
2 is repealed.

3 SEC. 8. Section 23608.3 of the Revenue and Taxation Code  
4 is repealed.

5 SEC. 9. Section 23610.5 of the Revenue and Taxation Code  
6 is amended to read:

7 23610.5. (a) (1) There shall be allowed as a credit against the  
8 “tax” (as defined by Section 23036) a state low-income housing  
9 tax credit in an amount equal to the amount determined in  
10 subdivision (c), computed in accordance with Section 42 of the  
11 Internal Revenue Code of 1986, except as otherwise provided in  
12 this section.

13 (2) “Taxpayer,” for purposes of this section, means the sole  
14 owner in the case of a C corporation, the partners in the case of a  
15 partnership, and the shareholders in the case of an S corporation.

16 (3) “Housing sponsor,” for purposes of this section, means the  
17 sole owner in the case of a C corporation, the partnership in the  
18 case of a partnership, and the S corporation in the case of an S  
19 corporation.

20 (b) (1) The amount of the credit allocated to any housing  
21 sponsor shall be authorized by the California Tax Credit  
22 Allocation Committee, or any successor thereof, based on a  
23 project’s need for the credit for economic feasibility in accordance  
24 with the requirements of this section.

25 (A) The low-income housing project shall be located in  
26 California and shall meet either of the following requirements:

27 (i) The project’s housing sponsor shall have been allocated by  
28 the California Tax Credit Allocation Committee a credit for  
29 federal income tax purposes under Section 42 of the Internal  
30 Revenue Code.

31 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the  
32 Internal Revenue Code.

33 (B) The California Tax Credit Allocation Committee may not  
34 require fees for the credit under this section in addition to those  
35 fees required for applications for the tax credit pursuant to Section  
36 42 of the Internal Revenue Code. The committee may require a fee  
37 if the application for the credit under this section is submitted in  
38 a calendar year after the year the application is submitted for the  
39 federal tax credit.

1 (2) (A) The California Tax Credit Allocation Committee shall  
2 certify to the housing sponsor the amount of tax credit under this  
3 section allocated to the housing sponsor for each credit period.

4 (B) In the case of a partnership or an S corporation, the housing  
5 sponsor shall provide a copy of the California Tax Credit  
6 Allocation Committee certification to the taxpayer.

7 (C) The taxpayer shall, upon request, provide a copy of the  
8 certification to the Franchise Tax Board.

9 (D) All elections made by the taxpayer pursuant to Section 42  
10 of the Internal Revenue Code shall apply to this section.

11 (E) For buildings located in designated difficult development  
12 areas or qualified census tracts as defined in Section 42(d)(5)(C)  
13 of the Internal Revenue Code, credits may be allocated under this  
14 section in the amounts prescribed in subdivision (c), provided that  
15 the amount of credit allocated under Section 42 of the Internal  
16 Revenue Code is computed on 100 percent of the qualified basis  
17 of the building.

18 (c) Section 42(b) of the Internal Revenue Code shall be  
19 modified as follows:

20 (1) In the case of any qualified low-income building placed in  
21 service by the housing sponsor during 1987, the term “applicable  
22 percentage” means 9 percent for each of the first three years and  
23 3 percent for the fourth year for new buildings (whether or not the  
24 building is federally subsidized) and for existing buildings.

25 (2) In the case of any qualified low-income building that  
26 receives an allocation after 1989 and is a new building not  
27 federally subsidized, the term “applicable percentage” means the  
28 following:

29 (A) For each of the first three years, the percentage prescribed  
30 by the Secretary of the Treasury for new buildings that are not  
31 federally subsidized for the taxable year, determined in  
32 accordance with the requirements of Section 42(b)(2) of the  
33 Internal Revenue Code, in lieu of the percentage prescribed in  
34 Section 42(b)(1)(A).

35 (B) For the fourth year, the difference between 30 percent and  
36 the sum of the applicable percentages for the first three years.

37 (3) In the case of any qualified low-income building that  
38 receives an allocation after 1989 and that is a new building that is  
39 federally subsidized or that is an existing building that is “at risk

1 of conversion,” the term “applicable percentage” means the  
2 following:

3 (A) For each of the first three years, the percentage prescribed  
4 by the Secretary of the Treasury for new buildings that are  
5 federally subsidized for the taxable year.

6 (B) For the fourth year, the difference between 13 percent and  
7 the sum of the applicable percentages for the first three years.

8 (4) For purposes of this section, the term “at risk of  
9 conversion,” with respect to an existing building means a building  
10 that satisfies all of the following criteria:

11 (A) The building is presently owned by a housing sponsor other  
12 than a qualified nonprofit organization.

13 (B) The building is a federally assisted building for which the  
14 low-income use restrictions will terminate or the building is  
15 eligible for prepayment under Subtitle 13 of the Emergency Low  
16 Income Housing Assistance Act of 1987 or under Section 502(c)  
17 of the Housing Act of 1949, anytime in the two calendar years after  
18 the year of application to the California Tax Credit Allocation  
19 Committee, and the purchaser has received preliminary approval  
20 from the applicable federal agency for a maximum level of  
21 incentives through a plan of action.

22 (C) The person acquiring the building enters into a regulatory  
23 agreement that requires the building to be operated in accordance  
24 with the requirements of this section for a period equal to the  
25 greater of 55 years or the life of the building.

26 (D) The building satisfies the requirements of Section 42(e) of  
27 the Internal Revenue Code regarding rehabilitation expenditures,  
28 except that the provisions of Section 42(e)(3)(A)(ii)(I) do not  
29 apply.

30 (d) The term “qualified low-income housing project” as  
31 defined in Section 42(c)(2) of the Internal Revenue Code is  
32 modified by adding the following requirements:

33 (1) The taxpayer shall be entitled to receive a cash distribution  
34 from the operations of the project, after funding required reserves,  
35 which, at the election of the taxpayer, is equal to:

36 (A) An amount not to exceed 8 percent of the lesser of:

37 (i) The owner equity that shall include the amount of the capital  
38 contributions actually paid to the housing sponsor and may not  
39 include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed at any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four taxable years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code does not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code is not applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code are not applicable.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of all the following:—, but not to exceed seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year (for the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for all urban consumers published by the federal Department of Labor)

(1) To be allocated for qualified low-income housing projects, including farmworker housing:

(A) Forty-five million dollars (\$45,000,000).

(B) The unused housing credit ceiling, if any, for the preceding calendar years.

(C) The amount of housing credit ceiling returned in the calendar year. For purposes of this subparagraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

~~(2)~~ following:

(1) *Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.*

(2) *The unused housing credit ceiling, if any, for the preceding calendar years.*

(3) *The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project with the period required by this section, or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.*

(4) *To be specifically designated for the construction or rehabilitation of qualified farmworker housing, all of the following:*

(A) *Five hundred thousand dollars (\$500,000), increased annually by the California Consumer Price Index.*

(B) *The unused qualified farmworker housing credits, if any, for the preceding calendar year or years.*

(C) *The amount of qualified farmworker housing credit ceiling returned in the calendar year. For purposes of this subparagraph, the amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income farmworker housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.*

*“Qualified farmworker housing” means housing located within this state that satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or*

1 occupied, and it need not be licensed pursuant to the Employee  
2 Housing Act at the time of the initiation of construction or  
3 rehabilitation.

4 The farmworker housing tax credit may not be allowed unless  
5 the taxpayer constructs or rehabilitates the property subject to the  
6 covenants, conditions, and restrictions imposed by this section and  
7 pursuant to the Farmworker Housing Assistance Program, which  
8 shall include, but not necessarily be limited to, a requirement that  
9 the taxpayer obtain, for approval by the committee, a construction  
10 cost audit and certification of eligible costs from a qualified  
11 accountant; and, subsequent to the construction or rehabilitation  
12 of the farmworker housing, owns or operates the farmworker  
13 housing pursuant to the requirements of this section, or ensures the  
14 ownership and operation of the farmworker housing pursuant to  
15 the requirements of this section.

16 (h) The term “compliance period” as defined in Section  
17 42(i)(1) of the Internal Revenue Code is modified to mean, with  
18 respect to any building, the period of 30 consecutive taxable years  
19 beginning with the first taxable year of the credit period with  
20 respect thereto.

21 (i) Section 42(j) of the Internal Revenue Code shall not be  
22 applicable and the following shall be substituted in its place:

23 The requirements of this section shall be set forth in a regulatory  
24 agreement between the California Tax Credit Allocation  
25 Committee and the housing sponsor, and this agreement shall be  
26 subordinated, when required, to any lien or encumbrance of any  
27 banks or other institutional lenders to the project. The regulatory  
28 agreement entered into pursuant to subdivision (f) of Section  
29 50199.14 of the Health and Safety Code, shall apply, providing the  
30 agreement includes all of the following provisions:

31 (1) A term not less than the compliance period.

32 (2) A requirement that the agreement be filed in the official  
33 records of the county in which the qualified low-income housing  
34 project is located.

35 (3) A provision stating which state and local agencies can  
36 enforce the regulatory agreement in the event the housing sponsor  
37 fails to satisfy any of the requirements of this section.

38 (4) A provision that the regulatory agreement shall be deemed  
39 a contract enforceable by tenants as third-party beneficiaries  
40 thereto, and that allows individuals, whether prospective, present,

1 or former occupants of the building, who meet the income  
2 limitation applicable to the building the right to enforce the  
3 regulatory agreement in any state court.

4 (5) A provision incorporating the requirements of Section 42  
5 of the Internal Revenue Code as modified by this section.

6 (6) A requirement that the housing sponsor notify the  
7 California Tax Credit Allocation Committee or its designee if there  
8 is a determination by the Internal Revenue Service that the project  
9 is not in compliance with Section 42(g) of the Internal Revenue  
10 Code.

11 (7) A requirement that the housing sponsor, as security for the  
12 performance of the housing sponsor's obligations under the  
13 regulatory agreement, assign the housing sponsor's interest in  
14 rents that it receives from the project, provided that until there is  
15 a default under the regulatory agreement, the housing sponsor is  
16 entitled to collect and retain the rents.

17 (8) A provision that the remedies available in the event of a  
18 default under the regulatory agreement that is not cured within a  
19 reasonable cure period include, but are not limited to, allowing any  
20 of the parties designated to enforce the regulatory agreement to  
21 collect all rents with respect to the project; taking possession of the  
22 project and operating the project in accordance with the regulatory  
23 agreement until the enforcer determines the housing sponsor is in  
24 a position to operate the project in accordance with the regulatory  
25 agreement; applying to any court for specific performance;  
26 securing the appointment of a receiver to operate the project; or  
27 any other relief as may be appropriate.

28 (j) (1) The committee shall allocate the housing credit on a  
29 regular basis consisting of two or more periods in each calendar  
30 year during which applications may be filed and considered. The  
31 committee shall establish application filing deadlines, the  
32 maximum percentage of federal and state low-income housing tax  
33 credit ceiling that may be allocated by the committee in that  
34 period, and the approximate date on which allocations shall be  
35 made. If the enactment of federal or state law, the adoption of rules  
36 or regulations, or other similar events prevent the use of two  
37 allocation periods, the committee may reduce the number of  
38 periods and adjust the filing deadlines, maximum percentage of  
39 credit allocated, and the allocation dates.



1 (2) The committee shall adopt a qualified allocation plan, as  
2 provided in Section 42(m)(1) of the Internal Revenue Code. In  
3 adopting this plan, the committee shall comply with the provisions  
4 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue  
5 Code.

6 (3) Notwithstanding Section 42(m) of the Internal Revenue  
7 Code, the California Tax Credit Allocation Committee shall  
8 allocate housing credits in accordance with the qualified allocation  
9 plan and regulations, which shall include the following provisions:

10 (A) All housing sponsors, as defined by paragraph (3) of  
11 subdivision (a), shall demonstrate at the time the application is  
12 filed with the committee that the project meets the following  
13 threshold requirements:

14 (i) The housing sponsor shall demonstrate there is a need for  
15 low-income housing in the community or region for which it is  
16 proposed.

17 (ii) The project's proposed financing, including tax credit  
18 proceeds, shall be sufficient to complete the project and shall be  
19 adequate to operate the project for the extended use period.

20 (iii) The project shall have enforceable financing  
21 commitments, either construction or permanent financing, for at  
22 least 50 percent of the total estimated financing of the project.

23 (iv) The housing sponsor shall have and maintain control of the  
24 site for the project.

25 (v) The housing sponsor shall demonstrate that the project  
26 complies with all applicable local land use and zoning ordinances.

27 (vi) The housing sponsor shall demonstrate that the project  
28 development team has the experience and the financial capacity to  
29 ensure project completion and operation for the extended use  
30 period.

31 (vii) The housing sponsor shall demonstrate the amount of tax  
32 credit that is necessary for the financial feasibility of the project  
33 and its viability as a qualified low-income housing project  
34 throughout the extended use period, taking into account operating  
35 expenses, a supportable debt service, reserves, funds set aside for  
36 rental subsidies, and required equity, and a development fee that  
37 does not exceed a specified percentage of the eligible basis of the  
38 project prior to inclusion of the development fee in the eligible  
39 basis, as determined by the committee.

1 (B) The committee shall give a preference to those projects  
2 satisfying all of the threshold requirements of subparagraph (A) if  
3 both of the following apply:

4 (i) The project serves the lowest income tenants at rents  
5 affordable to those tenants.

6 (ii) The project is obligated to serve qualified tenants for the  
7 longest period.

8 (C) In addition to the provisions of subparagraphs (A) and (B),  
9 the committee shall use the following criteria in allocating housing  
10 credits:

11 (i) Projects serving large families in which a substantial  
12 number, as defined by the committee of all residential units is  
13 comprised of low-income units with three and more bedrooms.

14 (ii) Projects providing single-room occupancy units serving  
15 very low income tenants.

16 (iii) Existing projects that are “at risk of conversion,” as  
17 defined by paragraph (4) of subdivision (c).

18 (iv) Projects for which a public agency provides direct or  
19 indirect long-term financial support for at least 15 percent of the  
20 total project development costs or projects for which the owner’s  
21 equity constitutes at least 30 percent of the total project  
22 development costs.

23 (v) Projects that provide tenant amenities not generally  
24 available to residents of low-income housing projects.

25 (4) For purposes of allocating credits pursuant to this section,  
26 the committee may not give preference to any project by virtue of  
27 the date of submission of its application except to break a tie when  
28 two or more of the projects have an equal rating.

29 (5) Not less than 20 percent of the low-income housing tax  
30 credits available annually under this section, Section 12206, and  
31 Section 17058 shall be set aside for allocation to rural areas as  
32 defined in Section 50199.21 of the Health and Safety Code. Any  
33 amount of credit set aside for rural areas remaining on or after  
34 October 31 of any calendar year shall be available for allocation  
35 to any eligible project. No amount of credit set aside for rural areas  
36 shall be considered available for any eligible project so long as  
37 there are eligible rural applications pending on October 31.

38 (k) Section 42(l) of the Internal Revenue Code shall be  
39 modified as follows:

1 The term “secretary” shall be replaced by the term “California  
2 Franchise Tax Board.”

3 (l) In the case where the state credit allowed under this section  
4 exceeds the “tax,” the excess may be carried over to reduce the  
5 “tax” in the following year, and succeeding years if necessary,  
6 until the credit has been exhausted.

7 (m) A project that received an allocation of a 1989 federal  
8 housing credit dollar amount shall be eligible to receive an  
9 allocation of a 1990 state housing credit dollar amount, subject to  
10 all of the following conditions:

11 (1) The project was not placed in service prior to 1990.

12 (2) To the extent the amendments made to this section by the  
13 Statutes of 1990 conflict with any provisions existing in this  
14 section prior to those amendments, the prior provisions of law  
15 shall prevail.

16 (3) Notwithstanding paragraph (2), a project applying for an  
17 allocation under this subdivision shall be subject to the  
18 requirements of paragraph (3) of subdivision (j).

19 (n) The credit period with respect to an allocation of credit in  
20 1989 by the California Tax Credit Allocation Committee of which  
21 any amount is attributable to unallocated credit from 1987 or 1988  
22 does not begin until after December 31, 1989.

23 (o) The provisions of Section 11407(a) of Public Law 101-508,  
24 relating to the effective date of the extension of the low-income  
25 housing credit, shall apply to calendar years after 1989.

26 (p) The provisions of Section 11407(c) of Public Law 101-508,  
27 relating to election to accelerate credit, does not apply.

28 (q) (1) A corporation may elect to assign any portion of any  
29 credit allowed under this section to one or more affiliated  
30 corporations for each taxable year in which the credit is allowed.  
31 For purposes of this subdivision, “affiliated corporation” has the  
32 meaning provided in subdivision (b) of Section 25110, as that  
33 section was amended by Chapter 881 of the Statutes of 1993, as of  
34 the last day of the taxable year in which the credit is allowed,  
35 except that “100 percent” is substituted for “more than 50  
36 percent” wherever it appears in the section, as that section was  
37 amended by Chapter 881 of the Statutes of 1993, and “voting  
38 common stock” is substituted for “voting stock” wherever it  
39 appears in the section, as that section was amended by Chapter 881  
40 of the Statutes of 1993.

1 (2) The election provided in paragraph (1):

2 (A) May be based on any method selected by the corporation  
3 that originally receives the credit.

4 (B) Shall be irrevocable for the taxable year the credit is  
5 allowed, once made.

6 (C) May be changed for any subsequent taxable year if the  
7 election to make the assignment is expressly shown on each of the  
8 returns of the affiliated corporations that assign and receive the  
9 credits.

10 (r) Any unused credit may continue to be carried forward, as  
11 provided in subdivision (k), until the credit has been exhausted.

12 This section shall remain in effect on or after December 1, 1990,  
13 for as long as Section 42 of the Internal Revenue Code, pertaining  
14 to low-income housing credits, remains in effect.

15 (s) The amendments to this section made by the act adding this  
16 subdivision shall apply only to taxable years beginning on or after  
17 January 1, 1994, except that paragraph (1) of subdivision (q), as  
18 amended, shall apply to taxable years beginning on or after  
19 January 1, 1993.

